

Mail Stop Interference  
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Paper 110  
Filed: 29 September 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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DAVID V. **GOEDEL**,  
And ROBERTO CREA

Junior Party  
(Application 07/374,311),  
v.

**HARUO SUGANO**,  
MASAMI MURAMATSU, and TADATSUGU TANIGUCHI

Senior Party  
(Patent 5,514,567 and 5,326,859).

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Patent Interference No. 105,334)  
(Technology Center 1600)

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*Before:* RICHARD TORCZON, SALLY GARDNER LANE, and MICHAEL P.  
TIERNEY, *Administrative Patent Judges.*

LANE, *Administrative Patent Judge.*

**Redeclaration – Bd. R. 203(c)**

1 Pursuant to the Decision on non-priority motions (Paper 109), the  
2 interference is redeclared to substitute Count 2 for Count 1, accord benefit to  
3 Sugano of its Japanese patent application no. 33931/1980, filed 19 March 1980,  
4 and designate Sugano as senior party.

5 It is

6 **ORDERED** that the interference is redeclared to the following extent only:

7 1.The following Count, Count 2, is substitute for Count 1:

8 A DNA encoding a mature human fibroblast interferon having a  
9 total of 166 amino acids of the sequence:

10

11 Met Ser Tyr Asn Leu Leu Gly Phe Leu Gln Arg Ser Ser Asn Phe  
12 Gln Cys Gln Lys Leu Leu Trp Gln Leu Asn Gly Arg Leu Glu Tyr Cys  
13 Leu Lys Asp Arg Met Asn Phe Asp Ile Pro Glu Glu Ile Lys Gln Leu  
14 Gln Gln Phe Gln Lys Glu Asp Ala Ala Leu Thr Ile Tyr Glu Met Leu  
15 Gln Asn Ile Phe Ala Ile Phe Arg Gln Asp Ser Ser Ser Thr Gly Trp  
16 Asn Glu Thr Ile Val Glu Asn Leu Leu Ala Asn Val Tyr His Gln Ile  
17 Asn His Leu Lys Thr Val Leu Glu Glu Lys Leu Glu Lys Glu Asp Phe  
18 Thr Arg Gly Lys Leu Met Ser Ser Leu His Leu Lys Arg Tyr Tyr Gly  
19 Arg Ile Leu His Tyr Leu Lys Ala Lys Glu Tyr Ser His Cys Ala Trp  
20 Thr Ile Val Arg Val Glu Ile Leu Arg Asn Phe Tyr Phe Ile Asn Arg  
21 Leu Thr Gly Tyr Leu Arg Asn.

22

23 and unaccompanied by a human fibroblast interferon presequence.

24

25 2.The same claims that were designated as corresponding to Count 1 also

26 correspond to Count 2 (Paper 1 at 5);

27 3.Sugano is accorded the benefit of the following application in addition to the

28 benefit it was accorded in the Declaration (Paper 1 at 5);

29 Japanese application no. 33931/1980, filed 19 March 1980

30 4.Sugano is designated as senior party in the interference.

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(Technology Center 1600)

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*Before: RICHARD TORCZON, SALLY GARDNER LANE, and MICHAEL P.  
TIERNEY, Administrative Patent Judges.*

*LANE, Administrative Patent Judge.*

**Judgment –Motions – Bd. R. 127(a)**

1           A decision on non-priority motions has been entered. (Paper 109). As  
2   noted in that decision, Goeddel has not alleged in its priority statement a date  
3   that is prior to Sugano's earliest accorded benefit date. (Paper 109 at 52). It is  
4   appropriate to enter judgment against Goeddel since Goeddel cannot prevail on  
5   priority in the interference.

6           It is

7                   **ORDERED** that judgment on priority as to Count 2, the sole count  
8   of the interference, is entered against junior party Goeddel (Paper 110 at 2);

9                   **FURTHER ORDERED** that claims 25-52 of Goeddel application  
10   07/374,311, which claims correspond to Count 2 (Paper 110 at 1 and Paper 1 at  
11   5), be FINALLY REFUSED, 35 U.S.C. §135(a);

12                  **FURTHER ORDERED** that the parties note the requirements of  
13   35 U.S.C. §135(c) and Bd.R. 205; and

14                  **FURTHER ORDERED** that a copy of this judgment shall be entered  
15   into the administrative record of the involved Goeddel application and the  
16   involved Sugano patents.

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